



Copenhagen Declaration Statement and proposals of the Conference of INGOs of the Council of Europe

The Conference of INGOs of the Council of Europe welcomes the initiative of the Danish Chairmanship of the Committee of Ministers to continue the process of reform of the European Convention on Human Rights system, initiated in Interlaken in 2010.

Since the initiation of this reform in Interlaken, and throughout the High Level Intergovernmental Conferences in Izmir, Brighton and Brussels, the Conference of INGOs has firmly and constantly recalled the centrality of the individual and the importance of individual application in the Convention system. Thus, the Conference of INGOs welcomes the fact that in the draft Copenhagen Declaration, as of the 1st paragraph, **the right to individual application is reaffirmed, as a corner stone of the Convention system.**

While recognising the improvements already undertaken to make the working processes of the European Court of Human Rights more efficient, and the progress made in the execution of its judgments, the Conference of INGOs wishes to recall the report of the Steering Committee for Human Rights (CDDH)¹ in which it is pointed out that what the Convention system requires is more resources and more efficient methods, and not deep reforms that change the Convention system itself.

In this regard, the Conference of INGOs supports most of the general observations and specific proposals contained in the joint NGO response of 13 February 2018.

At the current stage of its elaboration, with its overall aim and the drafting of its specific provisions, the Conference of INGOs considers that the draft of the Copenhagen Declaration does not reflect the fundamental priority which is the central place of the human being and the respect of his/her rights. Indeed, many provisions contribute directly or indirectly to reducing this pre-eminent position, to the point of marginalising it.

The Conference of INGOs, without going into the details of the provisions currently contained in the draft Declaration, wishes to draw attention to the orientations and proposals which raise questions and which seriously threaten the future of the European human rights protection system.

1. It is important to recall that by ratifying the Convention, each Member State and each jurisdiction has committed to guaranteeing the rights and freedoms defined in the Convention and to offer to each person an effective remedy at the national level. Access to rights must be impartial and guaranteed to everyone without discrimination. The expression formulated in paragraph 10 of the Declaration expressing the intention of “increasingly bringing human rights home” goes too far and is inappropriate. The fact of granting States a sovereign exclusivity in the field of human rights would now be a backwards step.

¹ CDDH. The report on the longer-term future of the System of the European Convention on Human Rights, adopted by the CDDH on 11 December 2015.

2. The Conference of INGOs recognises that it is primarily the responsibility of the Member States to effectively implement the rights guaranteed by the Convention. **However, the whole European protection system is based on the monitoring of the respect for these rights by the European Court of Human Rights. The principle of subsidiarity should not be diverted to the sole benefit of States.** For the same reasons, the proposal included in paragraph 13 "in particular when the number of people affected is such that a solution on an individual basis at international level is unrealistic" should be deleted. In addition, the Conference of INGOs proposes to delete the expression "constitutional traditions" and "national circumstances" which seems too circumstantial and may put the Convention system in difficulty.
3. The Declaration should place greater emphasis on the voluntary commitments by States to respect the rights guaranteed by the Convention and on the resulting obligation to implement the judgments of the Court. **In order to strengthen the Convention system, the priority for States is to take any practical action to implement the Convention at national level and to monitor its implementation. The judgments of the Court should be executed within a reasonable time taking into account the perspective and interests of the applicant. The effectiveness of the Convention System depends on this willingness to act, largely determined by the execution of the judgments.**
4. The Court's responsibility with the pilot judgment allows identifying a systemic problem and provides guidance to the government on the type of measures needed to solve the problem. The State, under the supervision of the Committee of Ministers of the Council of Europe remains the last decision-maker on the measures to be taken. This process may lead to major legislative changes which would strengthen the guarantee of the respect of human rights. **The role and impact of pilot judgments should be further emphasised in the draft Declaration.**
5. Any prioritisation of rights and any selectivity of applications which, under various pretexts, would be imposed on the Court is unacceptable because it is **contrary to the principle of universality and interdependence recognised by the international community and which applies to all human rights.**
6. The principle of subsidiarity has two dimensions: on the one hand, it is based on the principle of exhaustion of domestic remedies and on the other on the States' obligation to guarantee the rights and freedoms protected by the Convention. The principle of subsidiarity as well as the States' margin of appreciation deriving from it is a matter of technical expertise and must be supervised only by the Court. **The Court acts to protect both: the interests of the State and the applicants, but the margin of appreciation cannot be discussed or negotiated between policymakers and the Court. This must be done with the judicial authorities.**
7. The independence of the Court must be strictly protected and its authority firmly strengthened. **The dialogue between the Court and States must be maintained at the level of the Council of Europe. It is essential to check that nothing in the Declaration could be used as a pretext to exert political pressure on the Court.**
8. The methods for selecting the candidates to the function of judges at the Court should be transparent at national level and ensure the representativeness of the Court in each Member State. The individual independence of the candidate determines the collective

independence of the Court. The Parliamentary Assembly of the Council of Europe (PACE) should also ensure a transparent and honest election of judges. **For this reason, the criteria of expertise and independence of the candidate and of the method of selection should apply to these two stages.**

9. **The Conference of INGOs expresses its scepticism about the formulation of the role of civil society in paragraph 32 of the draft Declaration.** At the national level, Member States must ensure and implement meaningful civil participation in the law-making process, which is one of the principles of democratic governance. **The development of the rights and obligations included in the Convention does not stem from the dialogue with the Member States or from the dialogue with their populations and civil society, but results from the Court's case-law.** In addition, in accordance with PACE Resolution 1823(2011)², "the Parliamentary Assembly recalls that Council of Europe Member States are responsible for the effective implementation of international human rights norms they have signed up to, in particular those of the European Convention on Human Rights. This obligation concerns all state organs, whether executive, judicial or legislative".
10. **The Conference of INGOs welcomes paragraph 18 of the draft Declaration. However, it is necessary to stress the importance of the enabling environment for NGOs that act in favour of human rights and to ensure the execution of Court judgments in the Member States.** NGOs need to be able to work in a safe environment. The criticism they can express towards the government should in no way call into question the fundamental rights they enjoy under the Convention in the conduct of its activities. Reference to Recommendation (2007)¹⁴ of the Committee of Ministers of the Council of Europe can be useful in this context.

As a result, the Conference of INGOs of the Council of Europe believes that the current draft Declaration needs to be substantially redrafted in order to truly meet the future requirements and challenges of the system of protection of human rights in Europe.

²Resolution 1823 (2011). National parliaments: guarantors of human rights in Europe
<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=18011&lang=en>